TRANSCRIPT OF

SUPREME COURT OF THE UNITED

OCTOBER TERM, 1894.

No. 82.

JOSHUA BISHOP, APPELLANT

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

FILED JULY 26, 1894.

(19,021.)

(19,021.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 92.

JOSHUA BISHOP, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

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1 Court of Claims.

JOSHUA BISHOP, Claimant,
vs.
THE UNITED STATES. } No. 21914.

I.—*Petition and Amended Petition.*

The original petition in this cause was filed June 14, 1900, and by leave of court the same was amended, and the said amended petition in lieu of the original was filed June 20, 1900 and is as follows:

1½ *Petition as Amended and Exhibit "A."*

Filed June 20, 1900.

JOSHUA BISHOP, Claimant,
vs.
THE UNITED STATES. } No. 21914.

To the honorable Chief Justice and associated justices of the Court of Claims:

The petition of Joshua Bishop, commander United States Navy (retired).

Your petitioner, Joshua Bishop, respectfully shows:—

(I.)

That he is a citizen of the United States; that on the 20th day of September, 1854, he was regularly and duly appointed acting midshipman in the Navy of the United States; that in the year 1858 he was regularly and duly appointed midshipman, served during the civil war, and on March 3rd, 1865, was regularly and duly promoted to lieutenant commander; that your petitioner and claimant has at all times borne true allegiance to the Government of the United States, and that the facts above and hereafter stated he believes to be true.

(II.)

Your petitioner and claimant further respectfully shows, that he served the Government of the United States as stated in paragraph (I); that on February 8th, 1865, he was regularly and duly ordered to the U. S. S. "Wyoming," which proceeded to the Asiatic station, and served therewith until September 12th, 1867, when he received an order, of which the following is a copy:—

"U. S. FLAG SHIP HARTFORD,
"HONG KONG, CHINA, *September* 12, 1867.

"SIR: You are hereby detached from the U. S. S. Wyoming, "and will report to Lieut. Commander C. C. Carpenter, for passage "to the United States in the U. S. S. Wyoming, under his command. "On your arrival you will report in writing to the honorable Sec- "retary of the Navy.

"I am, respectfully, H. H. BELL,
"*Rear-Admiral, Commanding Asiatic Squadron.*

"Lieutenant-Commander Joshua Bishop U. S. S. Wyoming."

2 That in obedience to said order, petitioner and claimant on his arrival in the United States, reported in writing to the Honorable Gideon Wells, then Secretary of the Navy, and on February 9th, 1868, reported in person, and received an order, of which the following is a copy:

"NAVY DEPA-TMENT,
"WASHINGTON, *February* 8, 1868.

"SIR: The naval general court-martial before which you were "tried September 9th, 1867, found you guilty of the charges pre- "ferred against you, and sentenced you 'to be dismissed from the "naval service of the United States.' The sentence of the court in "your case having been approved by the President, you are hereby "dismissed from the naval service of the United States, and from "this date you will cease to be regarded as an officer in the United "States Navy.

"Respectfully, G. WELLS.
"*Secretary of the Navy.*

"Mr. Joshua Bishop late lieutenant commander U. S. Navy, navy yard, Boston, Mass."

Your petitioner and claimant shows and avers that the order just above referred to, was the first knowledge or intimation that he had of the alleged findings and sentence rendered against him resulting from alleged court-martial proceedings hereinafter referred to.

(III.)

Your petitioner and claimant further respectfully shows and avers that his alleged dismissal from the naval service of the United States, on the order referred to in paragraph (II), was illegal and utterly void; that the alleged court-martial proceedings in said order referred to, and on which said alleged order of dismissal was based, were from the beginning utterly illegal and void; that said alleged court-martial was not legally constituted as required by Art. II, of an act for the better government of the navy, approved July 17, 1862, in this: that it does not appear on the face of the said

alleged court-martial proceedings, that no more officers, other than those named, who composed said alleged court, could be summoned to compose a court of thirteen members without injury to the service; that said alleged court-martial proceedings are also void in this: that H. H. Bell, rear admiral, commanding Asiatic squadron, who convened said alleged court-martial, did not review the proceedings of said alleged court, and did not approve or confirm the findings and sentence of said alleged court, as directed and required, — Art. 20, of an act for the better government of the navy, approved July 17th, 1862; that said order of dismissal (alleged) referred to in paragraph (II) above, is illegal and void and of no effect, as well also, are said alleged court-martial proceedings upon which said alleged order is based, for this: that said alleged sentence of said alleged court-martial, extending to the dismissal of your petitioner and claimant, who at that time was a commissioned officer of the said navy, was not confirmed by the President, as required by Art. 19, of the act hereinbefore mentioned; that the alleged findings and sentence of said alleged court-martial were unjust; that the alleged record of said alleged proceedings *are* not in form or substance sufficient in law to warrant the issuing of the alleged order of
3 dismissal referred to in paragraph (II) above; that the said alleged findings of said alleged court-martial were contrary to the evidence and the weight of evidence entertained by said alleged court, and that claimant from the time of the issuance of said alleged order of dismissal to the present time, used every due diligence and effort to have said and every of said orders and proceedings set aside, for nothing holden, and to be restored to his place and rights in grade and pay.

(IV.)

Your petitioner and claimant further respectfully shows and avers that the precept for the alleged naval general court-martial, referred to in paragraph (III) above, was alleged to have been issued on the U. S. flagship "Hartford," Hong Kong, China, September 4th, 1867, by H. H. Bell, rear admiral, commanding United States Asiatic squadron; that said alleged court-martial assembled and met on U. S. steamer "Wachusett," Hong Kong harbor, China, on September 6th, 1867, and that petitioner and claimant has hereto annexed and to be considered as a part hereof, a copy of said alleged court-martial proceedings to which he begs leave to refer if it be necessary so to do.

(V.)

Your petitioner and claimant further respectfully shows and avers that on May 31st, 1867, in the harbor of Nagasaki, Japan, on the U. S. steamer "Wyoming," he was punished for the same identical alleged offences, designated as charges first and second and specifications thereunder, and on which petitioner and claimant was again tried and con-

victed by said alleged court-martial, as appears by the said proceedings hereto annexed; that said conviction by court-martial proceedings was illegal. Petitioner and claimant further avers that he was not guilty of the several alleged offences charged and specified in said alleged court-martial proceedings, and avers that he was not guilty of any offences for which he was punished as first above mentioned in this paragraph, and pleaded said previous punishment in bar of said proceedings, as appears by the same.

(VI.)

Your petitioner and claimant further respectfully shows and avers that he was promoted lieutenant commander as above stated, and was always legally entitled to that rank and pay of that grade, and was illegally deprived of his pay of his said grade from February 9th, 1868, to March 9th, 1871, and in other respects from September 13th, 1867, until Feb'y 8th, 1868; that petitioner and claimant claims that he is entitled to receive from the United States, pay, the sum of $8024.79 as follows:—

From February 9th, 1867, to March 9th, 1871	$7767 66
Difference between sea and shore pay from September 13th, 1867, to January 31st, 1868	241 05
Difference between sea pay and waiting orders Feb. 1–3, 1868	9 23
Difference between shore pay and waiting orders, February 4–8, 1868	6 85
	$8024.79

4

(VII.)

Your petitioner and claimant further respectfully shows and avers that he is the person interested in claim mentioned in paragraph (VI) above, and that no assignment or transfer of his said claim or any part thereof has been made; that he is entitled to the whole and every part of said claim from the United States, after allowing all just credits and offsets and demands, and is entitled to a judgment for the sum of $8024.79.

(VII½.)

Petitioner and claimant further shows and avers that on the ninth day of March, 1871, he received a commission reappointing him lieutenant commander of the U. S. Navy, which he avers was intended as a reinstatement; that at the time and since he (has) denied that he was legally dismissed the service, and avers that he was diligent in the prosecution of his rights.

(VIII.)

Petitioner and claimant further shows and avers, that the above stated cause is instituted in the above named court under and by

virtue of an act entitled "An act for the relief of Joshua Bishop," of which said act the following is a copy:

"(PRIVATE—No. 645.)

"Be it enacted by the Senate and House of Representatives of the "United States of America in Congress assembled, That the claim "of Joshua Bishop for alleged items of pay and unpaid to him for "services as a lieutenant-commander, United States Navy, between "the dates of September thirteenth, eighteen hundred and sixty "seven, and March ninth, eighteen hundred and seventy one, be, "and the same is hereby, referred to the Court of Claims. Jurisdic- "tion is hereby conferred on said court to try said cause—the statute "of limitation shall not apply thereto—and to render final judg- "ment therein, subject to the right of appeal by either party.

"Approved, June 6th, 1900."

(IX.)

Your petitioner and claimant, the premises considered, therefore prays, that this honorable Court of Claims of the United States will consider each and every the matters and things hereinbefore set forth, necessary to be considered; will set aside as for nothing holden the said court-martial proceedings, as well the finding and sentence thereof; as well the said order dismissing claimant from the said service to the end that said claimant may receive his just claims; that there may be granted to petitioner and claimant the several writs and processes of the said court to be issued out of said court as the necessities of your humble petitioner and claimant or his said cause may require; and that this honorable court may grant to your petitioner and claimant judgment in his favor on his said claim and all lawful additions thereto, and that the said honorable court may grant all relief, general, particular and special, to your petitioner and claimant to which according to the law of the land he may be entitled.

And your petitioner and claimant will ever pray, &c.

JOSHUA BISHOP,
Petitioner and Claimant.
IRWIN W. SCHULTZ,
Attorney and of Counsel with Petitioner and Claimant.

UNITED STATES OF AMERICA, }
District of Columbia, City of Washington, } *ss:*

Joshua Bishop, the above named petitioner and claimant, being duly sworn according to law on his oath saith, that he read the above petition, and knows the contents thereof; that the statements therein contained as made of his own knowledge are true, and those

made on information he believes to be true; that the sum therein claimed is justly due to him after allowing all just credits and offsets, and that no assignments or transfer of said claim or any interest therein has been made.

JOSHUA BISHOP.

Subscribed and sworn to before me this 15th day of June, A. D. 1900.

[SEAL] GEORGE W. TAYLOR,
Notary Public.

Filed June 15th, 1900.

6 THE UNITED STATES OF AMERICA:

In the Court of Claims.

JOSHUA BISHOP, Claimant,
vs.
THE UNITED STATES. } No. 21914. On Petition. Amendment.

To the honorable Chief Justice and associated justices of the Court of Claims.

Your petitioner and claimant, Joshua Bishop, begs to amend his petition filed in the above stated cause, by adding at the end of paragraph (I) of his said petition, the following:—

"Your petitioner and claimant further shows and avers that he has not in any way voluntarily or otherwise aided, abetted or given encouragement to rebellion against the said Government."

JOSHUA BISHOP,
Petitioner and Claimant.
ERWIN W. SCHULTZ, *Attorney.*

UNITED STATES OF AMERICA,
District of Columbia, City of Washington, } ss:

Joshua Bishop, the within named petitioner and claimant, being duly sworn on his oath saith, that the matters and things set out in the above amended petition are true.

JOSHUA BISHOP.

Sworn and subscribed before me on this 18th day of June, A. D. 1900.

[SEAL.] GEORGE W. TAYLOR,
Notary Public.

Filed June, 1900.

7 Proceedings of a naval general court-martial, convened on board of the U. S. steamer "Wachusett" in Hong Kong harbor, China, in the case of Lieutenant Commander Joshua Bishop, executive officer of the U. S. steamer Wyoming, by virtue of an order hereunto appended and marked "A."

NAVY DEPARTMENT, *November* 9, 1869.

A true copy.
HOLMES E. OFFLEY,
Chief Clerk.

U. S. steamer Wachusett, Hong Kong harbor, China.

10 O'CLOCK A. M., SEPTEMBER 6, 1867.

At 10 o'clock a. m. the court met pursuant to the order hereunto appended and marked "A."

Present: Commander John C. Febiger, senior member,
Commander R. W. Shufeldt, member,
Commander Geo. E. Belknap,
Lieutenant Commander F. H. Baker,
Lieutenant Commander L. A. Beardslee,
Lieutenant Commander F. R. Smith,
Lieutenant Commander F. J. Higginson,
and Passed Assistant Paymaster Samuel T. Browne, the judge advocate.

The accused, Lieutenant Commander Joshua Bishop, was also present.

The judge advocate then read aloud the order convening the court, and the warrant appointing the judge advocate, hereunto appended, and marked respectively "A" and "B."

The judge advocate then asked the accused if he objected to any member of the court, to which the accused replied "no." The judge advocate then asked the accused if he knew of any reason why the court should not proceed with his trial, to which the accused replied "no."

The judge advocate then asked the accused if he desired to employ counsel, to which the accused replied that he did, and named Captain James Forney, of the U. S. steamer Hartford, a captain in the U. S. Marine Corps, who was then introduced into court. The judge advocate was then duly sworn by the presiding officer, and the court duly sworn by the judge advocate in the presence of the accused.

The charges and specifications of the charges were then read aloud by the judge advocate, appended and marked "C."

By the judge advocate: Lieutenant Commander Joshua Bishop, you have heard read the charges and specifications of the charges preferred against you, how say you—"Guilty or not guilty?"

Answer: I plea in bar of trial that I was placed under arrest for the offense specified, and was fully released from the said arrest by

order of Rear Admiral Bell. I refer the court to paragraph 1205, Book of Regulations for the Government of the U. S. Navy, and also to the log book of the "Wyoming."

8 The court was cleared for deliberation to consider the plea presented by the accused, and a copy of such part of the log book as the accused wished to refer to, a copy of which is here appended and marked "D."

The court having maturely considered the plea, decided that it was inadmissible. The court was again opened and the accused and counsel came into court, and the accused was informed by the presiding officer that his plea was inadmissible.

The accused was then asked by the judge advocate: "You have heard the charges and specifications of the charges preferred against you, how say you—"Guilty or not guilty?"

In answer to this question the accused remained mute.

Lieutenant Commander STEPHEN A. MCCARTY, a witness on the part of the prosecution, was called into court, and duly sworn. The charges and specifications of the charges were read aloud by the judge advocate.

Question, by the judge advocate: What is your name, rank, and to what vessel are you now attached?

Answer: Stephen A. McCarty is my name; my rank, a lieutenant commander in the U. S. Navy; I am attached to the "Wyoming," but now under orders to the U. S. steamer "Monocacy."

Question, by the judge advocate: Lieutenant Commander Stephen A. McCarty, you have heard the charges and specifications read; you will please state everything within your knowledge bearing on said charges.

Answer: On or about the afternoon of the thirtieth day of May, while we lay in the harbor of Nagasaki, Japan, Mr. Bishop got to drinking. Towards evening he was more or less intoxicated. I do not know what order Mr. Bishop had in regard to going to sea.

On the morning afterward, that is, on or about the morning of the thirty-first day of May, I came on deck about daylight, and I found that Mr. Bishop was not on board ship. By the captain's orders, I took the deck, and "hove short the chain," and reported to the captain I had done so, and by him was ordered to wait and not heave up the ancher until further orders. We waited for from fifteen minutes to half an hour, about which time Mr. Bishop and the marshal of the consulate came off to the ship. When Mr. Bishop came on board, the captain called him one side and had some conversation with him. The captain then called me and informed me that Mr. Bishop was under suspension. We then got under way and went to sea.

Question, by the judge advocate: About what time was this occurrence, and where do you say the "Wyoming" was lying?

Answer: It was about the thirty-first day of May, and the "Wyoming" was lying in the harbor of Nagasaki, Japan.

Question, by the judge advocate: Lieutenant Commander McCarty, was you aware that the "Wyoming" was to sail at daylight on the morning of the thirty-first day of May, one thousand eight hundred and sixty-seven?

Answer, by the witness: I was not officially informed that she was to sail at that time, but I understood she was.

1st question by the court: Who was the officer next in rank to Lieutenant Commander Bishop at the time mentioned in the charges?

Answer: I was.

2nd question by the court: Did Lieutenant Commander Bishop, before going on shore the thirtieth of May, inform you of his intention, or pass the orders in regard to getting the vessel ready for sea by the morning of the 31st?

9

Answer: He reported to me that he was going on shore, but I do not remember that he gave me any orders.

3rd question by the court: Did you see Lieutenant Commander Bishop drink intoxicating liquors on or about the afternoon of the 30th day of May; if so, how often?

Answer: I saw him take a number of drinks on board ship before going on shore.

4th question by the court: Do you think that Lieutenant Commander Bishop, whom you state was somewhat intoxicated on the afternoon of the 30th of May, was in a proper condition to perform his duty?

Answer: I do not.

5th question by the court: Was Lieutenant Commander Bishop intoxicated when he came on board the Wyoming the morning of the 31st of May, 1867?

Answer: I do not know positively that he was.

6th question by the court: Did you receive the accused at the gangway, and notice his condition when he came on board? If yea, what was his condition?

Answer: I was on the bridge (when he came on board), which is immediately forward of the gangway; when the accused came on board, his condition was that of a man who had been intoxicated, and was not yet entirely sober.

Cross-examination:

By the accused: Did my remaining ashore detain the ship? Was not the ship waiting for the marshal? And did I not come on board some time before the marshal?

Answer: I do not know whether your remaining on shore detained the ship or not; I do not know which came first; they came nearly at the same time.

Question by the accused: Were there not several officers left on shore, and while attached to the "Wyoming," in consequence of the ship receiving orders for sea unexpectedly?

Answer: There was one officer so left.

Question by the accused: Was I not able to perform my duty as executive officer of the ship at both times specified?

Answer: On the first time specified, on the 30th of May, you were not; on the second occasion specified, I cannot say positively whether you were or not.

Question by the accused: Were there not several officers drinking with me on the 30th day of May, and had there not been a dinner given on board the "Wyoming"?

Answer: I believe there were some officers on board, drinking, and I think there were some persons on board to dinner.

Question by the accused: In what condition of health was I in at the time specified, and previous to that?

Answer: You had been suffering from asthma for some time. The precise condition of your health at that time I do not remember.

There being no more questions to be put to this witness, his testimony as hereinbefore written, was read aloud to him by the judge advocate, and by the witness acknowledged to have been correctly recorded.

The court was then cleared for deliberation to consider the propriety of detaining Lieutenant Commander McCarty in behalf of the accused, who desired he might be detained, and the court permitted him to do so.

At 12 m. the court took a recess for 30 minutes.

At 12.30 p. m. the court reopened, and Lieutenant GEO. D. B. GLIDDEN, a witness on the part of the prosecution, was called into court and duly sworn.

Question, by the judge advocate: State your name, rank, and to what vessel are you now attached?

Answer: My name is George D. B. Glidden, I am a lieutenant in the U. S. Navy attached to the U. S. steamer "Wyoming," but now under orders to the U. S. steamer "Monocacy."

The charges and specifications of the charges were then read aloud by the judge advocate.

Question, by the judge advocate: Lieutenant Glidden, you have heard read the charges and specifications of the charges preferred against Lieutenant Commander Joshua Bishop. You will state all the knowledge you have which bears upon these charges.

Answer: During the latter part of the day mentioned in the specification, Mr. Bishop was, according to my own convictions, under the influence of liquor. I do not remember to have seen him drink anything. I judged from appearances only. I remember hearing Captain Carpenter give the order to Lieutenant Commander Bishop, as soon as the hands are turned to from supper to unmoor ship and get ready for sea. I went ashore after hearing that. While Mr. Bishop was at dinner the officer of the deck, speaking through the hatch-

way, asked Mr. Bishop if he should go ahead and unmoor ship, the hands having been turned to; I do not remember the answer given by Mr. Bishop.

Question, by the judge advocate: Did Lieutenant Commander Bishop prepare the vessel for sea in obedience to the order of Lieutenant Commander C. C. Carpenter?

Answer: I don't know, sir.

Question, by the judge advocate: Did Lieutenant Commander Bishop go on shore on the afternoon of the 30th day of May, after you heard the order given to him by Lieutenant Commander C. C. Carpenter?

Answer: I met him on shore on the evening of that day.

Question, by the judge advocate: How long did Lieutenant Commander Bishop remain on shore, and at what time did he return to the U. S. steamer "Wyoming"?

Answer: It is my belief that the accused remained on shore all night, and I know returned to the ship shortly after daylight the following morning.

Examination by the court:

Question, by the court: Was Lieutenant Commander Bishop, on the evening of the thirtieth of May, in a proper state to attend to his duty as executive officer of the "Wyoming"?

Answer: He was not.

11 Question, by the court: If the accused was not in a proper state to attend his duty, from what reason or source did it arise?

Answer: Being, I suppose, under the influence of liquor.

Question, by the court: You have stated that you heard Lieutenant Commander Carpenter give Lieutendant Commander Bishop the order to unmoor ship as soon as the hands were turned to from supper; was that order obeyed?

Answer: I do not know that it was.

Question, by the court: When did you leave the ship to go on shore?

Answer: Between half-past five and a quarter to six o'clock.

Question, by the court: Was the ship unmoored before you left the ship?

Answer: I do not know whether it was or not.

Question, by the court: Is it not customary to call the officers on board the Wyoming when all hands are called?

Answer: It is now.

The examination was here closed on the part of the prosecution.

The accused was asked if he wished to question the witness, Lieutenant Glidden, and he replied he did not.

There being no more questions to put to this witness, his testimony as heretofore written down was read aloud to him by the

judge advocate, and by him acknowledged to have been correctly recorded, and he was discharged from further attendance on the court, he being under orders to the U. S. S. "Monocacy," now on the eve of her departure.

Lieutenant Commander CHARLES C. CARPENTER, a witness on the part of the prosecution was called into court, and duly sworn.

By the judge advocate: Please state your name, rank, and to what vessel you are now attached.

Answer: Charles C. Carpenter; a lieutenant commander; commanding the U. S. steamer "Wyoming."

The charges and specifications of the charges were then read aloud by the judge advocate.

Question, by the judge advocate: Lieutenant Commander Carpenter, you have heard read the charges and specifications of the charges preferred against Lieutenant Commander Bishop; please state all knowledge you have which bears upon said charges and specifications.

Answer: On or about the thirtieth day of May last, in the harbor of Nagasaki, Japan, I received an order from the admiral to go to sea at early daylight the next morning. This was on board the "Hartford." When I returned to the Wyoming I was met by Lieutenant Commander Bishop, and the officer of the deck, Mr. Glidden. I then told Lieutenant Commander Bishop to have the vessel ready for sea at early daylight next morning, and to inform the officers that the ship was going to sea. I noticed that Mr. Bishop was intoxicated at the time. I then went on shore, and on my return I sent for Mr. Bishop again in the cabin, and asked him if there were any officers on shore and if he had informed the officers that the ship was going to sea at early daylight; and he replied, there were none on shore, and that they had all been told that the ship was going to sea. I went on board the "Hartford" in the evening and returned about eleven o'clock, and when I returned, the officer of the deck informed me that Lieutenant Commander Bishop had gone on shore.

12 I gave orders for steam at four o'clock, and to have Mr. McCarty called. At three o'clock the next morning I was called by the officer of the deck, who informed me that Mr. Bishop had not returned on board, and at four o'clock I was called; the anchor was hove short, steam was ready and I remained waiting until the United States marshal came on board, as he was to go out with me. About twenty minutes to five o'clock, Lieutenant Commander Bishop came on board, and I asked him why he had remained on shore when I had given orders to be ready for sea at early daylight, and he said that I had not given the order. One of the engineers of the ship and two or three servants were on shore, and when they returned, they informed me that they had permission to go on shore,

and the engineer said he had not been informed that the vessel was going to sea the next morning.

Question, by the judge advocate: What time do you state this occurrence took place, and where was the U. S. steamer "Wyoming" lying?

Answer: It occurred on or about the thirtieth day of May last, and the "Wyoming" was lying in the harbor of Nagasaki, Japan.

Examination by the court:

Question, by the court: At what time was the "Wyoming" unmoored, and under whose superintendence?

Answer: She was unmoored about six o'clock, and by the officer of the deck. I asked the officer of the deck where Mr. Bishop was, and he answered he was at dinner?

Question, by the court: Did you give the accused permission to go on shore during the thirtieth day of May?

Answer: I told him when I first took command that in a secure harbor he need not come to me to go on shore if Mr. McCarty was on board. This I told him as a general rule.

The examination of the witness on the part of the prosecution was here closed. The accused was asked by the judge advocate if he wished to ask any questions of the witness, and he replied, "Yes, sir."

Cross-examination by the accused:

By the accused: Did my remaining on shore detain the ship? Was not the ship waiting for the marshal, and did I not come on board some time before the marshal?

Answer: I think the marshal arrived a few minutes before the accused, but I am not certain.

Question, by the accused: Did you not tell me that you did not expect to sail *to* the morning, when you gave the order to have the ship ready for sea?

Answer: No, sir; I did not. I expected to go to sea at four o'clock in the morning. The marshal was detained; he did not come at the time the consul said he would be on board.

Re-examination by the court:

Question, by the court: When, on your coming from the "Hartford," and as you state in your testimony, you found the accused intoxicated, was he so much intoxicated as to be unfit for duty?

Answer: As it turned out, yes, he was; I did not suspend him or take him from duty because I thought he might get over it.

13 Question, by the court: When you went on board the "Hartford" again and remained until eleven o'clock p. m.,

did you leave the accused in charge of the ship, and was he then in condition to attend to his duty?

Answer: I left the ship about half-past six o'clock, and the accused was at the gangway and in about the same condition; and I thought he was able to attend to the duties of the ship in my absence, and the circumstances of his going on shore and not remembering the orders I had given him, afterward convinced me that he was intoxicated.

Question, by the court: After you had suspended the accused from duty, by whose order was he placed on duty again, and how long after he had been placed under suspension?

Answer: He was placed on duty again by order of the admiral, about twelve hours after he was placed under suspension.

Question, by the court: How was the order given—by signal or otherwise?

Answer: By letter, I think.

Question, by the court: Did you understand that no further proceedings were to be had against the accused when you restored him to duty?

Objection was made to this question and the court was cleared for deliberation upon the propriety of admitting it, and the court was again opened and the question again asked.

Answer: No, I did not. I understood it was to be further investigated, and it was so mentioned in the admiral's letter.

Question, by the court: Can you produce the admiral's order before the court—if yea, will you present it to the court?

Answer: I can and I will.

The examination on the part of the prosecution here closed. The accused desired to ask the witness further questions.

Re-examination by the accused:

By the accused: Did you not give me a verbal order, saying Admiral Bell had ordered that I should be restored to duty, and did you inform me that I was to be only temporarily released?

Answer: I did say the admiral had restored the accused to duty; whether I told him anything more or not, I cannot say.

There being no more questions to put to this witness, his testimony as heretofore written, was read over to him and pronounced by him to be correctly recorded, and he withdrew from the court. Neither the accused nor the prosecution wishing to detain the witness, Lieutenant Commander Stephen A. McCarty, and his ship being ready for sea, he was discharged from further attendance on the court.

At four o'clock p. m. the court adjourned to meet again at ten o'clock to-morrow morning, Saturday, September 7, 1867.

U. S. steamer "Wachusett," Hong Kong harbor, China.

SATURDAY, *September* 7, 1867.

At ten o'clock a. m. the court met pursuant to adjournment.
Present: Commander John C. Febiger, senior member,
Commander R. W. Shufeldt, member,
Commander George E. Belknap,
Lieutenant Commander F. H. Baker,
14 Lieutenant Commander L. A. Beardslee,
Lieutenant Commander F. R. Smith,
Lieutenant Commander F. J. Higginson,
and Passed Assistant Paymaster Samuel T. Browne, the judge advocate.

The accused, Lieutenant Commander Joshua Bishop, and his counsel, Captain James Forney, U. S. Marine Corps, were also present.

The proceedings of yesterday were read by the judge advocate, and approved by the court.

The letter from Rear Admiral H. H. Bell, referred to in the testimony of Lieutenant Commander C. C. Carpenter, given in the proceedings of yesterday, was received and read aloud by the judge advocate; a copy of said letter is herewith appended and marked "E."

Lieutenant CHARLES D. SIGSBEE, a witness on the part of the prosecution, was called into court and duly sworn.

Question, by the judge advocate: State your name, rank and to what vessel you are now attached?

Answer: My name is Charles D. Sigsbee. I am a lieutenant in the U. S. Navy, and I am now attached to the "Ashuelot."

The charges and specifications of the charges preferred against Lieutenant Commander Joshua Bishop were read aloud by the judge advocate, in the presence of the witness.

Examination:

Question, by the judge advocate: Lieutenant Sigsbee, you have heard read the charges and specifications of the charges preferred against Lieutenant Commander Joshua Bishop. You will please state all the knowledge you have which bears upon these charges and specifications.

Answer: On the first specification: On or about the thirtieth day of May, Lieutenant Commander Bishop, then executive officer of the "Wyoming," was drunk during the latter part of the afternoon. On the thirtieth day of May I was officer of the deck from four o'clock in the evening. Lieutenant Commander Bishop neglected to attend to his duty in not coming on deck to unmoor ship when all hands were called. I sent down to the accused to ask him if I should unmoor ship, and he instructed me to do so. Captain Carpenter asked

me why Mr. Bishop was not on deck, and I answered that Mr. Bishop had sent word to me to unmoor ship. I do not know whether the captain gave Mr. Bishop orders to have the vessel ready for sea or not. It was generally understood that we were to go to sea the next morning. The captain seemed to notice many things which should have been attended to towards getting the vessel ready for sea, and requested me to attend to them.

Mr. Bishop was out of the ship on the night of the thirtieth day of May, and I do not know what time he returned on board on the thirty-first day of May.

Question, by the judge advocate: At what time do you say that these occurrences took place, and where was the "Wyoming" lying?

Answer: On the thirtieth and thirty-first days of May last, and the "Wyoming" was lying in the harbor of Nagasaki, Japan.

Examination by the court:

Question, by the court: By whose order was all hands
15 called to unmoor ship, on the afternoon of the thirtieth day of May last?

Answer: I do not know positively. I think the captain sent me the order, and I sent down to Mr. Bishop.

The examination of the witness was closed here on the part of the prosecution.

The judge advocate then asked the accused if he wished to ask the witness any questions, and the accused replied "Yes."

Cross-examination by the accused:

Question by the accused: You say that several things had not been done which Lieutenant Commander Carpenter noticed, and ordered you to have them attended to; will you please state what they were?

Answer: The only thing I can remember now is the unshipping of the gangway ladder; I think getting the lower booms alongside was another. There were several things noticed at different times.

Question by the accused: Was it Captain Bankhead's order to put the ship under sailing orders some time previous to getting under way, while he was in command of the ship; was it not always the rule to send the officers a messenger boy that the ship would sail at such a time?

Answer: I do not remember.

Question by the accused: Was it the custom when all hands were called to unmoor ship to call the officers, until after the occurrence on the morning of the thirty-first of May?

Answer: I do not remember when the change in the custom took place; under Captain Bankhead it was not required for anyone but the executive officer and officer of the deck to be called. Captain Carpenter gave the order for all officers who had deck duty to be

called. It had always been the custom for the executive officer to take the deck when unmooring ship.

Question by the accused: Was not the order to go to sea on the morning of the thirty-first of May a very unexpected one, and were not several officers and a number of the crew left on shore in consequence?

Answer: I do not think the order was unexpected. I do not know that any of the crew were ashore over time. There was an officer left on shore when we sailed.

Question by the accused: Was it not always the custom for me to leave the accommodation ladder shipped until just before heaving up the last anchor?

Answer: Generally it was left until just before getting up the last anchor; I do not think there was any rule in regard to it.

Question by the accused: Has it not been a frequent occurrence for me to come on deck suffering from the asthma?

Answer: The accused used to come on deck suffering from some sickness. I do not know whether it was the asthma or not.

Re-examination by the court:

Question, by the court: Did Lieutenant Commander Bishop make his appearance on deck during your watch on the evening of the thirtieth of May, 1867, and give any orders towards getting the vessel ready for sea?

16 Answer: The accused came on deck and gave orders. He gave orders when anyone asked him for them.

There being no more questions to ask this witness, his testimony, as hereinbefore written, was read aloud by the judge advocate, and pronounced by the witness to be correctly recorded, and the witness withdrew from court.

The court here took a recess for half an hour. At half-past twelve o'clock the court again met. Acting Ensign CHARLES R. HASKINS, a witness on the part of the prosecution, was called into court and duly sworn.

Question, by the judge advocate: State your name, rank and to what vessel you are now attached?

Answer: Charles R. Haskins; acting ensign; attached to the U. S. steamer "Wyoming."

The charges and specifications of the charges were read aloud by the judge advocate.

Question, by the judge advocate: Acting Ensign Charles R. Haskins, you have heard read the charges and specifications of the charges preferred against Lieutenant Commander Joshua Bishop. You will state all the knowledge you have bearing upon the said charges and specifications.

Answer: On the afternoon of the thirtieth day of May last, or in the evening, Lieutenant Commander Bishop was intoxicated on board the U. S. steamer "Wyoming." I know nothing as to what the orders to the accused were. I know that he went on shore in the evening, I think, between the hours of eight and nine. I do not know when he returned on board.

Question, by the judge advocate: Acting Ensign Charles R. Haskins, when do you say these occurrences took place, and where was the "Wyoming" lying?

Answer: On the thirtieth of May last, and the "Wyoming" was lying in the harbor of Nagasaki, Japan.

Question, by the judge advocate: Acting Ensign Charles R. Haskins, were you informed that the U. S. steamer "Wyoming" was to go to sea at daylight on the morning of the thirty-first day of May last?

Answer: I think I had been, but cannot swear positively as to it.

Question, by the judge advocate: Acting Ensign Charles R. Haskins, was it generally understood among the officers of the U. S. steamer "Wyoming" on the thirtieth day of May last that said steamer was to go to sea at daylight on the morning of the thirty-first day of May last?

Answer: It was.

Question, by the judge advocate: Acting Ensign Charles R. Haskins, was the fact of the going to sea of the U. S. steamer "Wyoming" on the morning of the thirty-first day of May last at all unexpected by the officers?

Answer: I do not recollect.

Question, by the judge advocate: Did Lieutenant Commander Bishop take the usual steps on the evening of the thirtieth day of May last to place the U. S. steamer "Wyoming" in readiness for going to sea at daylight on the morning of the thirty-first day of May last?

Answer: I do not recollect.

17 The testimony of this witness was here closed on the part of the prosecution.

The judge advocate then asked the accused if he desired to ask the witness any questions, and he replied, "I do."

Cross-examination:

Question by the accused: How do you know I was intoxicated?

Answer: I judged by his general conduct and by the fact that I had seen him drink large quantities of wine during the afternoon.

Question by the accused: Was the vessel ready for sea at daylight the morning of the thirty-first of May?

Answer: I do not know.

There being no more questions to ask this witness, his testimony as hereinbefore written was read aloud by the judge advocate and

pronounced by the witness to have been correctly recorded, and the witness withdrew from the court.

The case was here closed on the part of the prosecution.

The judge advocate asked the accused if he had any witnesses he wished to introduce in behalf of the defense, and he replied he had none. The accused asked time to prepare his defense and the court adjourned until ten o'clock Monday morning, September 9, 1867.

U. S. steamer "Wachusett," Hong Kong harbor, China.

10 O'CLOCK A. M., SEPTEMBER 9, 1867.

At 10 o'clock a. m. the court met pursuant to adjournment.

Present: Commander John C. Febiger, senior member,
Commander R. W. Shufeldt, member,
Commander Geo. E. Belknap, member,
Lieutenant Commander F. H. Baker, member,
Lieutenant Commander L. A. Beardslee, member,
Lieutenant Commander F. R. Smith, member,
Lieutenant Commander F. J. Higginson, member,
and Passed Assistant Paymaster Samuel T. Browne the judge advocate.

The accused, Lieutenant Commander Joshua Bishop, and his counsel, Captain James Forney, U. S. Marine Corps, were also present.

The proceedings of the court on Saturday, the 7th inst., were read aloud by the judge advocate, and approved by the court. A written statement of the defense was, by the desire of accused, submitted to the court.

The court was cleared for deliberation upon the matter of considering and admitting the statement that the accused has presented in his defense.

The court decided to admit the defense which the accused submitted and which is hereunto appended and marked "7."

The court was again opened and the accused, Lieutenant Commander Joshua Bishop, and his counsel, Captain James Forney of the U. S. Marine Corps, came into court.

The accused was informed by the court that the court had decided to admit the statement which the accused had submitted. The statement of the accused as above referred to was then read aloud by the counsel for the accused.

The court was then closed for deliberation upon the finding
18 in the case of Lieutenant Commander Joshua Bishop, charged as herein stated in charges and specifications preferred by Rear Admiral H. H. Bell, commanding U. S. Asiatic squadron, and a copy of which charges and specifications is hereunto appended and marked "C."

The judge advocate then read aloud such parts of the testimony as the court desired to hear.

The presiding officer having ascertained that every member was

ready to give his opinion. The judge advocate had in consecutive order the specifications to each charge, and also each charge, and addressing each member, commencing with the junior member, said:

From the evidence in the matter now before you, how say you of the specifications and charges against Lieutenant Commander Joshua Bishop, said specifications and charges preferred by Rear Admiral H. H. Bell, commanding U. S. Asiatic squadron. Is the accused "guilty or not guilty?"

Answer, by the court: Of the specification of the first charge, Proven!

Of the first charge, Guilty!

Of the specification of the second charge, Proven!

Of the second charge, Guilty!

and the court do therefore sentence the accused Lieutenant Commander Joshua Bishop to be dismissed from the naval service of the United States.

COMDR. JOHN C. FEBIGER, *Sr. Member.*
COMDR. R. W. SHUFELDT, *Member.*
COMDR. GEO. E. BELKNAP, *Member.*
LT. COMDR. F. H. BAKER, *Member.*
LT. COMDR. L. A. BEARDSLEE, *Member.*
LT. COMDR. FRED. R. SMITH, *Member.*
LT. COMDR. F. J. HIGGINSON, *Member.*
PASSED ASSISTANT PAYMASTER SAMUEL T. BROWNE, *Judge Advocate.*

These proceedings of a naval general court-martial convened by my order for the trial of Lieutenant Commander Joshua Bishop, United States Navy, are hereby respectfully forwarded and submitted to the honorable Secretary of the Navy for the action of His Excellency the President of the United States, article 19th of an act for the better government of navy, approved July 17, 1862.

H. H. BELL,
Rear Admiral, Commanding U. S. Asiatic Squadron.

U. S. S. Hartford, Hong Kong, September 10, 1867.

Precept for a Naval General Court-martial.

A.

U. S. flagship "Hartford," Hong Kong, China.

SEPTEMBER 4, 1867.

By virtue of authority contained in the act of Congress, entitled An act for the better government of the Navy of the United States, approved July 17, 1862, a naval general court-martial is hereby ordered to convene on board of the United States steamer "Wachu-

sett" in the harbor of Hong Kong, China, on Friday, the sixth day of September, anno Domini one thousand eight hun-
19 dred and sixty-seven, at 10 o'clock in the forenoon, or as soon thereafter as practicable, for the trial of Joshua Bishop, a lieutenant commander in the United States Navy, and of such other persons as may be legally brought before it.

The court will be composed of the following officers, that is to say:

Commander John C. Febiger, senior member,
Commander R. W. Shufeldt,
Commander Geo. E. Belknap,
Lt. Commander F. H. Baker,
Lt. Commander L. A. Beardslee,
Lt. Commander F. R. Smith,
Lt. Commander F. J. Higginson;

and Passed Assistant Paymaster Samuel T. Browne is hereby appointed the judge advocate.

H. H. BELL,
Rear Admiral, Commanding United States Asiatic Squadron.

United States flagship "Hartford."

HONG KONG, *September* 4, 1867.

Passed Assistant Paymaster Sam'l T. Browne, U. S. S. "Ashuelot."

SIR: You are hereby appointed judge advocate of a naval general court-martial, ordered to convene on board the U. S. S. "Wachusett," on Friday, the 6th of September, 1867, at 10 o'clock in the forenoon, and you will report at the time and place, and for the duty specified, to Commander J. C. Febiger, senior member of the court.

The charge and specification of charge preferred against Lieutenant Commander Joshua Bishop of the U. S. S. "Wyoming," are herewith enclosed, and you will present them to the court upon its organization.

You will please acquaint yourself with the merits of the case without delay.

I am, sir, very respectfully, H. H. BELL,
Rear Admiral, Commanding U. S. Asiatic Squadron.

Reported September 6, at 10 a. m.

JOHN C. FEBIGER,
Comm'd'r, Sr. Officer.

C.

Charges and specifications of charges preferred by Rear Admiral Henry H. Bell, commanding U. S. Asiatic squadron, against Lieutenant Commander Joshua Bishop, of the United States Navy.

Charge 1st. Drunkenness.

Specification: In this, that Joshua Bishop, a lieutenant commander in the Navy of the United States, attached to and serving on board

of the United States steamer Wyoming as executive officer, was, on or about the thirtieth day of May, anno Domini one thousand eight hundred and sixty-seven, intoxicated on board of the said United States steamer Wyoming, then lying in the harbor of Nagasaki, Japan.

Charge 2nd. Neglect of duty.

Specification: In this, that the said Lieutenant Commander Joshua Bishop, of the United States Navy, attached to and serving on board of the United States steamer Wyoming as executive officer, then lying in the harbor of Nagasaki, Japan, on or about the 30th (thirtieth) day of May, anno Domini one thousand eight hundred and sixty-seven, was ordered by his commanding officer, Lieutenant Commander Charles C. Carpenter, to have the said United States steamer Wyoming ready for sea by daylight on the morning of the thirty-first day of May, anno Domini one thousand eight hundred and sixty-seven, and that the said Lieutenant Commander Joshua Bishop did neglect to obey the aforesaid order, and did go on shore, from whence he did not return until after daylight on the morning of the said thirty-first day of May, one thousand eight hundred and sixty-seven.

H. H. BELL,
Rear Admiral, Commanding U. S. Asiatic Squadron,
U. S. Flagship "Hartford."

Shanghai, China, June 21, 1867.

Witnesses:
LIEUT. COMDR. CHAS. C. CARPENTER.
LIEUT. COMDR. S. H. McCARTY.
LIEUT. CHAS. D. SIGSBEE.
LIEUT. GEO. D. B. GLIDDEN.
ENSIGN CHAS. R. HASKINS.

D.

Copy of Entries Made in the Log Book of the U. S. Steamer Wyoming, May 31, 1867.

From 4 to 8 a. m.—Lieut. Comdr. Joshua Bishop was suspended from duty by order of Lieut. Comdr. C. C. Carpenter.

From 4 to 8 p. m.—At 6.40 p. m. Lieut. Comdr. Bishop was restored to duty by order of Rear Admiral H. H. Bell.

I certify the foregoing to be a correct copy of entries on the log of the U. S. steamer "Wyoming," May 31, 1867, and copied from said log by myself.

SAMUEL T. BROWNE,
Passed Ass't Paymaster, Judge Advocate.

E.

U. S. flagship "Hartford."

NAGASAKI, JAPAN, *May* 31, 1867.

Lieut. Comm'd'r C. C. Carpenter, comm'd'g U. S. S. "Wyoming," Nagasaki.

SIR: Your communication of this date reporting Lieutenant Commander Bishop to me is received.

You will restore Lieutenant Commander Bishop to duty to await an opportunity for time to investigate the case.

I am, sir,

Very respectfully, H. H. BELL,

Rear Admiral, Commanding U. S. Asiatic Squadron.

I certify that the above is a correct copy of a letter received by myself from Rear Admiral H. H. Bell.

C. C. CARPENTER,

Lieut. Comm'd'r, Commanding U. S. S. "Wyoming."

F.

Defense of Lieut. Commander Joshua Bishop, of the U. S. steamer "Wyoming," against charges preferred against him by Rear Admiral H. H. Bell, commanding U. S. Asiatic squadron.

Mr. President and gentlemen of the court:

I have the honor respectfully to present the following defense:

21 Of the first charge of "drunkenness" I have only to state that on the evening specified in the charge and specification, I had been dining with a number of officers from the different vessels in the squadron, and several American residents of Nagasaki, Japan, and being executive officer of the ship, I was obliged to entertain them, and more particularly when they were my own guests, but I cannot see in what way I exhibited signs of intoxication which rendered me unfit for the performance of duty.

Lieutenant Commander Carpenter stated that when he left the "Wyoming" for the "Hartford," that I was under the influence of liquor, and then, directly afterwards, states that he went away, leaving the ship in my charge, and that I was on deck at the gangway, and that he did not think it necessary to place me under suspension, because he then thought I was able to attend to my duties.

Lieutenant Glidden also testified I (Lieutenant Commander Bishop) was on deck, at the gangway, when Lieutenant Commander Carpenter left the ship. I cannot understand why he should leave

the ship in my charge if I was so much under the influence of liquor as to render me unfit for duty.

Of the second charge:

At 5.30 p. m. Lieutenant C. D. Sigsbee came to the wardroom, hatch, and said that the hands were turned to, and asked if he should go ahead and unmoor ship. I was then at dinner. I told him to go ahead and unmoor, and I think that I also said, get the ship ready for sea. I did not go on deck myself, not because I was unable to do so, but because I had guests on board, and on several occasions, while Captain John P. Bankhead was in command, I had not taken the deck when I had guests on board, and on such occasions the officer of the deck took charge.

Lieutenant Commander Carpenter states that he sent for me in the cabin and asked me if there were any men or officers ashore, and that I said "No." We had given special liberty to some men a few days previously, and one or two had not returned on time. I was under the impression that it was these he referred to, as I knew that a number of officers were then ashore. I did not send for them, as I did not so understand his order; and while Captain Bankhead was in command of the "Wyoming," it was not customary to send for officers on shore when orders were given to get the ship ready for sea at daylight.

It was evidently not generally understood by the officers of this vessel on shore that the ship would go to sea at daylight; but that the order was a very unexpected one, also that the officers on board were aware that the vessel had orders for sea in the morning.

Lieutenant Sigsbee says that Lieutenant Commander Carpenter noticed several things which had not been attended to, and when questioned mentions only the accommodation ladder. He states, afterwards, that it was not customary to unship it until just before heaving up the last anchor.

I left the ship on the evening of the 30th of May, 1867, and after I had received the report of the boatswain that everything was ready for getting under way. At the time I left the ship there had been no order given to get steam up and I did not leave the ship until after 8 p. m. Lieut. Comdr. S. A. McCarty states that I told him I was going ashore. Lieut. Comdr. Carpenter states distinctly that 22 it was not necessary to obtain his permission when I desired to leave the ship.

I left Lieut. Comdr. McCarty on board when I left the ship in the evening. I returned to the ship in the morning in time to get her under way, and I did not detain her one moment. I returned to the vessel before the U. S. marshal came on board. The ship waited for the U. S. marshal and not for me.

If I had not been on board in time the ship would have gone to sea without me.

Mr. President and members of the court, indeed I cannot see in

what way I committed myself on the first charge, or neglected my duty on the second.

At the time referred to, I had been suffering many days from a severe attack of the asthma, which completely unfitted me at times to attend the duties of the ship. As Lieut. Comdr. McCarty and Lieut. Sigsbee both mention, in the evidence, that I had been suffering from sickness for some time previous to the time specified in the charge.

Finally, I desire to call the attention of the court that this trial has taken me entirely by surprise. I was given to understand by Lieut. Comdr. Carpenter that no further proceedings would be taken against me. I have never seen, nor even heard of a letter from Admiral Bell in reference to the subject, and that this matter should be now brought up on the eve of the ship's departure for home I consider very severe upon me, and I hope that the court will take the matter into consideration.

Respectfully submitted,

JOSHUA BISHOP,
Lieutenant Commander.

23 II.—*Traverse. Filed Feb'y* 10, 1903.

In the Court of Claims of the United States, December Term, A. D. 1902.

JOSHUA BISHOP
vs.
THE UNITED STATES. } No. 21914.

And now comes the Attorney General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

L. A. PRADT,
Assistant Attorney General.

[Endorsed:] No. 21914 Bishop *vs.* The United States. General traverse. L. A. Pradt, Assistant Attorney General.

24 III.—*Findings of Fact and Conclusion of Law and Opinion of the Court. Filed March* 23, 1903.

JOSHUA BISHOP
v.
THE UNITED STATES.

This case having been heard by the Court of Claims, the court, upon the evidence, makes the following

Findings of Fact.

I.

The claimant is a citizen of the United States, to wit, an officer on the retired list of the United States Navy. The following is his military record:

1854, September 20, appointed an acting midshipman.

1858, June 15, warranted midshipman, from June 11, 1858.

1861, January 28, warranted passed midshipman, from January 19, 1861.

1861, February 28, warranted master, from February 23, 1861.

1861, August 14, commissioned lieutenant, from April 19, 1861.

1865, April 1, commissioned lieutenant-commander, from March 3, 1865.

1868, February 8, dismissed pursuant to sentence of general court-martial.

1871, March 8, commissioned lieutenant-commander, from March 1, 1871.

1888, March 8, commissioned commander, from August 25, 1887.

1896, December 31, transferred to the retired list, section 1453, Revised Statutes.

II.

On the 5th day of December, 1867, claimant was a lieutenant commander in the Navy, attached to the U. S. S. *Wyoming* as executive officer, said vessel being commanded by Lieut. Commander C. C. Carpenter, and comprising a part of the United States Asiatic squadron, under the command of Rear-Admiral H. H. Bell, then in the harbor of Hong Kong, China. On that day the following entry was made in the log book of the *Wyoming:*

"From 4 to 8 a. m.

"Lt. Comdr. Joshua Bishop placed under arrest to await trial by court-martial, and served with a copy of charges, by order of Rear-Admiral H. H. Bell, comdg. U. S. Asiatic squadron.

"E. F. CRAWFORD, *Mate.*"

25 III.

On September 5, 1867, a court-martial was convened on board of the U. S. S. *Wachusetts*, in Hongkong harbor, for the trial of Lieut. Commander Joshua Bishop, executive officer of the U. S. S. *Wyoming*, pursuant to the following order:

Precept for a Naval General Court-martial.

U. S. flagship "Hartford."

KONGKONG, CHINA, *September 4th*, 1867.

By virtue of authority contained in the act of Congress entitled An act for the better government of the Navy of the United States, approved July 17th, 1862, a naval general court-martial is hereby ordered to convene on board of the United States steamer *Wachusett*, in the harbor of Hongkong, China, on Friday, the sixth day of September, anno Domini one thousand eight hundred and sixty-seven, at ten o'clock in the forenoon, or as soon thereafter as practicable, for the trial of Joshua Bishop, a lieut. commander in the United States Navy, and of such other persons as may be legally brought before it.

The court will be composed of the following officers—that is to say:

Commander John C. Febiger, senior member.
Commander R. W. Shufeldt.
Commander Geo. E. Belknap.
Lt. Commander F. H. Baker.
Lt. Commander L. A. Beardslee.
Lt. Commander F. R. Smith.
Lt. Commander F. J. Higginson.

And Passed Assistant Paymaster Samuel T. Brown is hereby appointed the judge-advocate.

H. H. BELL,
Rear-Admiral, Commanding United States Asiatic Squadron.

IV.

On said date September 5, 1867, claimant was arraigned and tried on the following charges and specifications:

Charges and specifications of charges preferred by Rear-Admiral Henry H. Bell, commanding U. S. Asiatic squadron, against Lieutenant-Commander Joshua Bishop, of the United States Navy.

CHARGE 1ST.—*Drunkenness.*

Specification.

In this, that Joshua Bishop, a lieutenant-commander in the Navy of the United States, attached to and serving on board of the United

States steamer *Wyoming* as executive officer, was, on or about the thirtieth day of May, anno Domini one thousand eight hundred and sixty-seven, intoxicated on board of the said United States steamer *Wyoming*, then lying in the harbor of Nagasaki, Japan.

26 CHARGE 2D.—*Neglect of Duty.*

Specification.

In this, that the said Lieutenant-Commander Joshua Bishop, of the United States Navy, attached to and serving on board of the United States steamer *Wyoming* as executive officer, then lying in the harbor of Nagasaki, Japan, on or about the 30th (thirtieth) day of May, anno Domini one thousand eight hundred and sixty-seven, was ordered by his commanding officer, Lieutenant-Commander Charles C. Carpenter, to have the said United States steamer *Wyoming* ready for sea by daylight on the morning of the thirty-first day of May, anno Domini one thousand eight hundred and sixty-seven, and that the said Lieutenant-Commander Joshua Bishop did neglect to obey the aforesaid order, and did go on shore, from whence he did not return until after daylight on the morning of the said thirty-first day of May, one thousand eight hundred and sixty-seven.

H. H. BELL,
Rear-Admiral, Commdg. U. S. Asiatic Squadron.

U. S. flagship Hartford, Shanghai, China, June 21st, 1867.

Witnesses:
LIEUT. COMMDR. CHAS. C. CARPENTER.
LIEUT. COMDR. S. A. McCARTY.
LIEUT. CHAS. D. SIGSBEE.
LIEUT. GEO. D. B. GLIDDEN.
ENSIGN CHAS. R. HASKINS.

On said charges and specifications said court-martial found as follows:

Of the specification of the first charge, "Proven."
Of the first charge, "Guilty."
Of the specification of the second charge, "Proven."
Of the second charge, "Guilty."

And the court do therefore sentence the accused, Lieutenant-Commander Joshua Bishop, to be dismissed from the naval service of the United States.

COMDR. JNO. C. FEBIGER, *Sr. Member.*
COMDR. R. W. SHUFELDT, *Member.*
COMDR. GEO. C. BELKNAP, *Member.*
LT. COMDR. F. H. BAKER, *Member.*
LT. COMDR. L. A. BEARDSLEE, *Member.*
LT. COMDR. FRED. R. SMITH, *Member.*
LT. COMDR. F. J. HIGGINSON, *Member.*
PASSED ASSISTANT PAYMASTER SAMUEL T. BROWNE,
Judge-Advocate.

These proceedings of a naval general court-martial convened by my order, for the trial of Lieutenant-Commander Joshua Bishop, United States Navy, are hereby respectfully forwarded and submitted to the honorable Secretary of the Navy, for the action of
27 His Excellency the President of the United States, article 19th of an act for the better government of the aavy approved July 17th, 1862.

H. H. BELL,
Rear-Admiral, Commanding U. S. Asiatic Squadron.

U. S. S. Hartford, Hongkong, September 10th, 1867.

V.

The following action was taken on the findings of said court-martial:

Brief in the case of Lieutenant-Commander Joshua Bishop, U. S. N., tried by naval general court-martial, September 9, 1867, on board the U. S. S. "Wachusett," by order of Rear-Admiral H. H. Bell, comdg. Asiatic squadron.

Charge 1st. Drunkenness.

Specification. May 30, 1867, being attached to and serving on board the U. S. S. *Wyoming*, then in the harbor of Nagasaki, Japan, as executive officer of said vessel, was intoxicated.

Charge 2d. Neglect of duty.

Specification. May 30, 1867, having been ordered by the commanding officer of said vessel, Lieut. Comdr. C. C. Carpenter, to have the said U. S. S. *Wyoming* ready for sea by daylight on the morning of May 31, 1867, did neglect to obey the aforesaid order, and did go on shore, from whence he did not return until after daylight on the morning of May 31, 1867.

Plea: (Stood mute.) Not guilty. Finding: Guilty (of all).

Sentence: "To be dismissed from the naval service of the United States."

The evidence in the case is positive and clear, and the findings of the court sustained thereby. Lieut. Comdr. Bishop produces no witnesses in his behalf, and the statement made by him to the court is lame throughout. There is no recommendation by the court for clemency.

The sentence of the court is just and proper.

Case No. 4688, vol. 3., p. 27.

Lieutenant-Commander Joshua Bishop, U. S. N.

Tried Sept. 9, 1867, by naval general court-martial, per order of Rear-Admiral H. H. Bell, U. S. N., comdg. Asiatic squadron.

NAVY DEPT., *Dec.* 3, 1867.

Respectfully submitted to His Excellency the President for his action, in accordance with article 19 of "An act for the better government of the navy," approved July 17, 1862.

GIDEON WELLES,
Secretary of the Navy.

Approved:

ANDREW JOHNSON.

Dec. 3d, 1867.

Dismissed Feb'y 8, 1868. Letters to Mr. Joshua Bishop and 4th Auditor.

28 On February 8, 1868, the following letter was addressed to claimant and was duly received by him:

NAVY DEPARTMENT,
WASHINGTON, *February* 8, 1868.

SIR: The naval general court-martial before which you were tried September 9, 1867, found you guilty of the charges preferred against you, and sentenced you "to be dismissed from the naval service of the United States." The sentence of the court in your case having been approved by the President, you are hereby dismissed from the naval service of the United States, and from this date you will cease to be regarded as an officer in the United States Navy.

Respectfully,

G. WELLES,
Secretary of the Navy.

Mr. Joshua Bishop, late lieutenant-commander, U. S. Navy, navy yard, Boston, Mass.

VI.

The claimant had no knowledge or information of the order of Rear-Admiral H. H. Bell, dated May 31, 1867, being "Exhibit E" in the court-martial proceedings, set out in claimant's petition, until the hearing.

Claimant received no pay as an officer from February 8, 1868, the date of his dismissal from the service, until March 10, 1871. The claimant received the order from Rear-Admiral H. H. Bell, set out in claimant's petition. The claimant was not furnished by his commanding or any other officer at the time of claimant's suspension, May 31, 1867, or on September 5, 1867, when claimant was arrested for trial, with a copy of the communication and the order marked "Exhibit E" of claimant's petition, or of charges against claimant upon which his suspension from duty was predicated, nor was claimant called upon at any time for a statement or list of persons whom he might wish to have relative to them.

On May 31st the following entry on the log appears:

"From 4 to 8 a. m.

"Lieutenant-Commander Joshua Bishop was suspended from duty by order of Lt. Commander C. C. Carpenter.

"GEORGE B. GLIDDEN, *Master.*

"From 6 to 8 p. m.

"At 6.40 Lt. Comdr. Joshua Bishop was restored to duty by order of Rear-Admiral H. H. Bell.

"GEORGE B. GLIDDEN, *Master.*"

VII.

During the month of March, 1871, the following correspondence took place between the claimant and the Secretary of the Navy:

WASHINGTON CITY, D. C., *March 9th*, 1871.

Hon. Geo. M. Robeson, Secretary of the Navy, Washington, D. C.

SIR: I have the honor to acknowledge the receipt of my commission as a lieutenant-commander on the active list of the
29 United States Navy, bearing date of March 1st, 1871, and respectfully signify my acceptance of the same, and hereby return the oath of office properly filled up.

In accepting this commission I would respectfully inform you that I do not voluntarily surrender my claim to the effect that I have, up to the present time, been a lieutenant-commander in the navy by virtue of a commission dated March 3rd, 1865, and that I have never been legally deprived of said commission.

I have the honor to be, sir, very respectfully, your obe't servant,

JOSHUA BISHOP,
Lt. Comm'd'r, U. S. N.

NAVY DEPARTMENT,
WASHINGTON, D. C., *March* 18, 1871.

SIR: Your letter of the 9th instant, acknowledging the acceptance of a commission as a lieutenant-commander in the navy, coupled with certain conditions, has been received.

You are informed that the department declines to receive such an acceptance.

It must be unconditional and disconnected from any other matter.

The acceptance is herewith returned.

Respectfully, GEO. M. ROBESON,
Secretary of the Navy.

Mr. Joshua Bishop, Turnback, Missouri.

TURNBACK, MO., *March* 27, 1871.

SIR: I have the honor to acknowledge the receipt of your letter of March 18th, 1871, returning my letter of acceptance of a commission as a lieutenant-commander in the United States Navy.

I respectfully comply with the requirements of the department, and return herewith a letter of acceptance in lieu of the one returned to me.

My oath of office having been retained in the department, I presume it is not required that I should send a second one.

I have the honor to be, sir, very respectfully, your obedient servant,

JOSHUA BISHOP,
Lt. Com., U. S. N.

Hon. George M. Robeson, Secretary of the Navy, Washington, D. C

WASHINGTON, *March 9th*, 1871.

SIR: I have the honor to acknowledge the receipt of commission as lieutenant-commander in the United States Navy (active list), dated March 1st, 1871, and hereby inform the department that I accept the commission, and return the oath of office required in such cases, duly sworn to and certified.

I am, very respectfully and gratefully, your obedient servant,

JOSHUA BISHOP,
Lt. Com., U. S. N.

Hon. Geo. M. Robeson, Secretary of the Navy, Washington, D. C.

30 VIII.

Had the claimant's services been continuous in the navy he would be entitled to receive with his claim for pay from September, 1867, to February, 1868, more than $3,000.

IX.

The claimant was detached from the U. S. S. *Wyoming* on September 12, 1867, and ordered to report for passage to the United States on the U. S. S. *Wyoming*, and that upon his arrival to report in person to the honorable Secretary of the Navy. In accordance with that order he set sail for the United States, and reported in writing to the Secretary of the Navy on the 9th of February, 1868, and then and there received this order of dismissal, as shown therein.

X.

Claimant in Account with the United States, Showing Claim and the Amounts Received by Him on such Claims.

Claims:

September 13, 1867, to January 31, 1868, $2,343, sea pay, 141 days	$905.11
One-third additional, same period	301.70
	1,206.81
Less tax at 5 per cent	41.03
	1,165.78

Received:			
September 13, 1867, to January 31, 1868, $1,875, shore pay, 141 days	724.30		
One-third additional, same period	241.43		
	965.73		
Less tax at 5 per cent	28.97		
		936.76	
			$229.02
2. Claims:			
February 1, 1868, to February 3, 1868, $2,343, sea pay, 3 days		19.26	
One-third additional, same period		6.42	
		25.68	
Less tax at 5 per cent		.87	
			24.81
Received:			
February 1, 1868, to February 3, 1868, $1,500, leave pay, 3 days	12.33		
One-third additional, same period	4.11		
	16.44		
Less tax at 5 per cent	.41		
		16.03	
			8.78
3. Claims:			
February 4, 1868, to February 8, 1868, $1,875, shore duty pay, 5 days		25.68	
One-third additional, same period		8.56	
		34.24	
Less tax at 5 per cent		1.03	
		33.21	
31 Received:			
February 4, 1868, to February 8, 1868, $1,500, leave pay, 5 days	$20.55		
One-third additional, same period	6.85		
	27.40		
Less tax at 5 per cent	.68		
		$26.72	
			6.49

4. Claims:

February 9, 1868, to June 30, 1870, $1,875, shore pay, 2 years and 142 days		4,479.44	
One-third additional, same period		1,493.15	
		5,972.59	
Less tax at 5 per cent		179.18	
		5,793.41	

Claims:

July 1, 1870, to March 9, 1871 (paid from March 10, 1871, inclusive), $2,600, shore pay, two-fifths years, 252 days	1,795.07		
Less tax at 5 per cent. to July 31, 1870	6.80		
		1,788.27	
			7,581.68
			7,825.97

Conclusion of Law.

Upon the foregoing findings of fact the court decides as a conclusion of law that the claimant's petition be dismissed.

WELDON, J., delivered the opinion of the court:

The petitioner claims pay as an officer in the United States Navy from February 9, 1868, to March 9, 1871, as lieutenant-commander, and also sea pay from September 13, 1867, to February 8, 1868.

The suit is prosecuted under the provisions of an act of Congress approved on the 6th day of June, 1900, which in substance provides that the alleged items of pay due and unpaid to claimant for services as lieutenant-commander in the United States Navy between the dates of September 13, 1867, and March 9, 1871, be referred to the Court of Claims. Jurisdiction is conferred on the court to try the case, and that the statute of limitation shall not apply thereto, with the right of appeal to either party. In pursuance of the said statute the claimant filed a petition claiming pay as lieutenant-commander between the said periods.

The claimant, as shown by the findings, entered the navy in the year 1854, and continued therein, being promoted from time to time, until February 8, 1868, when he was dismissed, pursuant to the sentence of a general court-martial. On March 8, 1871, he was again commissioned as lieutenant-commander as of March 1, 1871, and after being promoted in August, 1887, was in December, 1896, transferred to the retired list.

The claim is founded upon an alleged illegality of the court-mar-

tial, its proceedings, the consequent dismissal of the claimant, and a balance of pay from September to February.

The main issue involved in this proceeding is, therefore, the question whether the court-martial was legal in its organization
32 and the proceedings which resulted in the dismissal of claimant were in accordance with law.

The contention of counsel for claimant as to the construction of the statute is, that it intends more than the mere waiver of the statute of limitations, and that by the terms of the statute the claimant is "admitted to be a lieutenant-commander during the time referred to in the private act."

The defendants' counsel insists that nothing is admitted in the statute in favor of the claim; that the only effect of the act is that the statute of limitation is removed, and therefore the demand of the claimant is to be determined upon the same basis of legal right as if the suit had been brought within the period of six years from the time the cause of action accrued. If the dismissal of the claimant was illegal, the statute would commence to run, as to the alleged illegal dismissal, on the 8th day of February, 1868, and as to increase, September, 1867, and would have expired long before the petition was filed.

By the terms of the law giving the court jurisdiction, the claim of Joshua Bishop, "for alleged items of pay due and unpaid to him for services as lieutenant-commander in the United States Navy," is submitted to the court for adjudication.

The statute, by its terms, does not waive any of the legal rights of the defendants except the statute of limitation, and its only effect is to place the claimant in such a condition as that he may have his claim adjudicated according to law upon the same basis as if the suit had been brought within the statutory period of six years.

The phrase in the statute "lieutenant-commander" is simply the expression of a description of the service, which it is alleged the claimant rendered, without any intention to admit or concede that during the period of his alleged service he was in law or in fact a commander in the naval service during the time of his dismission.

The legal effect of the statute, therefore, is to confer jurisdiction on the court by the removal of the statute of limitation, the court having jurisdiction of the subject-matter of the claim.

The claimant by his counsel contends that he is entitled to pay as lieutenant-commander during the entire period from September, 1867, to March, 1871, when he was reappointed in the navy, as a lieutenant-commander, and this contention is based upon the dismissal of the claimant, founded upon the sentence of an alleged illegal court-martial, the illegal proceedings of such court-martial, and the failure to pay claimant what he was entitled to from September, 1867, to February, 1868. It is also contended that the proceedings of the court-martial were not reviewed and approved by the President and were not approved by the officer who ordered the court. The substance of the contentions by the claimant is that the

proceedings by which he was dismissed from the navy were not legal, and therefore he is entitled to pay for the period during which he was in fact out of the naval service of the United States.

Upon the part of the defendants it is insisted that the claimant was lawfully dismissed, and therefore he has no right to recover, and that he was fully paid before dismissal.

On the 5th of September, 1867, it is shown by the findings that the claimant was placed under arrest to await trial by court-martial and served with a copy of charges by order of the rear-
33 admiral made on September 4 preceding. A court-martial was ordered by the admiral, consisting of seven officers and a judge-advocate, as shown in finding III. On the 5th day of September, 1867, charges and specifications were preferred against the claimant as shown in finding IV, consisting of two charges, first, drunkenness, and second, neglect of duty, with specifications, stating in detail the facts and circumstances of each charge, and on said charges and specifications the court found claimant guilty.

Upon the finding of the court is indorsed, by the rear-admiral commanding, the following in substance, that the proceedings are respectfully forwarded and submitted to the Secretary of the Navy for the action of the President under the act for the better government of the navy of July 7, 1862. The judgment and sentence of the court is that the claimant be dismissed from the naval service of the United States.

In the findings are shown the action of the Navy Department and the President, and it is insisted by counsel in that connection that the court-martial proceedings in question should have been fully reviewed by the President, and that before the proceedings reached him they should have been approved or disproved by the officer who ordered the court.

The findings as to the action of the President embrace a brief statement of the case embodying the substance and charges of the proceedings before the court-martial, with a comment upon the sufficiency of the evidence and the justice of the sentence. At the foot of what is called a brief in the case in the record of the executive department is the following:

"Respectfully submitted to His Excellency the President, for his action in accordance with article 19 of 'An act for the better government of the navy, approved July 17, 1862,' signed by the Secretary of the Navy."

Then follows on the same paper the word "approved" and the signature of the President.

It was most earnestly argued that the record of the action of the navy and executive departments is not sufficient to show that the President approved the findings of the court-martial upon his own personal investigation. The record came to the President through and by the Secretary of the Navy, in whose department the matter was properly pending, and it may be fairly presumed from the finding that the President had personal knowledge of the leading and

important features of the case, on which he based his judgment that the result reached by the court-martial was according to the truth and law of the case.

As a result of that finding and approval of the President, the Secretary of the Navy, on February 8, 1868, notified the claimant that the sentence of the court-martial dismissing him from the service had been approved by the President, and that because of such approval he was dismissed from the naval service from the date of the communication, and that thereafter he would not be regarded as an officer of the United States.

In the case of Wilcox *v.* Jackson (13 Pet., 498) the question was made as to whether the act of the Secretary of War was the act of the President, on which question the Supreme Court said:

"Now, although the immediate agent in requiring this reservation was the Secretary of War, yet we feel justified in pre-
34 suming that it was done by the approbation and direction of the President. The President speaks and acts through the heads of the several departments in relation to subjects which appertain to their respective duties. Both military posts and Indian affairs, including agencies, belong to the War Department. Hence, we consider the act of the War Department in requiring this reservation to be made as being in legal contemplation the act of the President; and, consequently, that the reservation thus made was in legal effect a reservation made by order of the President, within the terms of the act of Congress."

In the case of Williams *v.* The United States (1 How., 290–297) the Supreme Court, upon the question of the acts of the President to personally perform all the executive duties of his office, said:

"Such an interpretation of the law this court can by no means admit. * * * The President's duty in general requires his superintendence of the administration; yet this duty can not require of him to become the administrative officer of every department and bureau, or to perform in person the numerous details incidental to services, which, nevertheless, he is, in a correct sense, by the Constitution and laws, required and expected to perform. This can not be * * * because, if it were practicable, it would be to absorb the duties and responsibilities of the various departments of the Government in the personal action of the one chief executive officer. It can not be, for the stronger reason that it is impracticable, nay, impossible."

That principle of law was announced by the Supreme Court at a period in our history when the duties of the President were not a tithe of what they are at the present time. If the President were required to inspect and investigate personally every matter that falls within the purview of his official duty, the performance of the task would be impossible and the public business in one of the most important departments of the Government would be stagnated to an intolerable degree. The law presumes that the President has wise, faithful, and honest counselors to assist him in the discharge of his

duties, and he has a right to rely upon them to a certain extent even in the performance of his most delicate and important trust.

While the judicial power of the President, such as is exercised in passing upon the findings and sentence of a court-martial, can not be delegated, the President may avail himself of the services of a subordinate officer in all ministerial and clerical services which may aid him in the consideration of the finding and sentence of the court-martial; but the approval or disapproval of the finding and sentence must be the individual act of the President. He is the tribunal of final jurisdiction, which must pass upon the record and judgment of the court-martial. Therefore, for a court to sustain the sentence of a court-martial it must appear that the President approved the sentence. His personal knowledge of the facts disclosed by the record of the proceedings of the court-martial will be inferred from the terms of his approval.

In the case of Runkle *v.* The United States (122 U. S. R., 543) it is said, after referring to the case of Wilcox *v.* Jackson (*supra*) and other cases:

"Here, however, the action required by the President is judicial in its character, not administrative. As commander-in-chief of the army he has been made by law the person whose duty it is to
35 review the proceedings of courts-martial in cases of this kind. This implies that he is himself to consider the proceedings laid before him and decide personally whether they ought to be carried into effect. Such a power he can not delegate. His personal judgment is required, as much so as it would have been in passing on the case if he had been one of the members of the court-martial itself. He may call others to his assistance in making his examinations and informing himself as to what ought to be done, but his judgment, when pronounced, must be his own judgment, and not that of another. And this because he is the person, and the only person, to whom has been committed the important judicial power of finally determining, upon an examination of the whole proceedings of a court-martial, whether an officer holding a commission in the Army of the United States shall be dismissed from service as a punishment for an offense with which he has been charged, and for which he has been tried."

In the case of Page *v.* The United States (137 U. S. Reports, 673) it is in substance held that the decision of the President confirming or disapproving the sentence of a court-martial in time of peace extending to the loss of life or dismissal of a commissioned officer is a judicial act to be done by him personally, and is not an official act presumptively his, but it need not be attested by his signature in order to be effectual.

In the case of Fletcher *v.* The United States (148 U. S., 84) the Secretary of War indorsed upon the record in that case the following order, dating it from the War Department and signing it as Secretary of War:

"In conformity with the sixty-fifth of the Rules and Articles of

War, the proceedings of the general court-martial in the foregoing case have been forwarded to the Secretary of War for the action of the President.

"The proceedings, findings, and sentence are approved, and the sentence will be duly executed."

In relation to that record the court says:

"The presumption is that the Secretary and the President performed the duties devolved upon them, respectively, and it would be unreasonable to construe the Secretary's indorsement as meaning that he had received the proceedings for the action of the President in conformity with article 65, and had approved them himself and ordered execution of the sentence in convention of the article."

In reference to the proceedings of the court-martial it is said:

"As the court-martial had jurisdiction, errors in its exercise, if any, can not be reviewed in these proceedings." (Dynes *v.* Hoover, 20 Howard, 65; Keyes *v.* The United States, 109 U. S., 336; Smith *v.* Whitney, 116 U. S., 167.)

In this case the approval of the President is founded on a condition of facts which affirmatively shows that he was advised in the premises by a knowledge of the case. He may not have read the entire record, but he had such knowledge as would enable him to pass intelligently and knowingly upon the question of the regularity of the proceeding and the justness of the sentence.

It is not necessary to resort to elementary works upon the subject of the law in the discussion and decision of the legal qual-
36 ities and character of courts-martial; it is sufficient to rely upon what the Supreme Court has said on that subject. In the case of Carter *v.* McClaughrey (183 U. S., 365) it is said: "Courts-martial are lawful tribunals with authority to finally determine any case over which they have jurisdiction, and their proceedings, when confirmed as provided, are not open to review by civil tribunals except for the purpose of ascertaining whether the military court had jurisdiction of the person and subject-matter, and whether, though having such jurisdiction, it had exceeded its powers in the sentence pronounced."

The court-martial had jurisdiction of the person of the claimant and the subject-matter of the proceeding, to wit, the conduct of the claimant with reference to the performance of his military duties. When he became a part of the naval service he thereby subjected himself to the lawfully constituted courts-martial of the service, clothing them with jurisdiction over his person and conduct.

It is insisted by counsel for claimant that the proceedings of the court-martial are void because Rear-Admiral H. H. Bell, who convened the court, did not approve or confirm the findings of the court. To sustain this theory of the law the attention of the court is called to article 20 of the act of July 17, 1862, entitled "An act for the better government of the Navy of the United States" (12 Stat. L., 605), which is as follows: "Article 20. Every officer who is by this

act authorized to convene courts-martial shall have the power on revisal of its proceedings to remit or mitigate but not to commute the sentence of any such court which by this act he is authorized to approve and confirm."

In further support of the contention that the sentence is void because it does not appear that the admiral approved or disapproved the sentence. The case of Runkle *v.* The United States (*supra*) is cited in which the Supreme Court quotes the opinion of the Attorney-General (11 Opinions, 21), in which it is said in speaking of a court-martial:

"It sits to pass upon the most sacred questions of human rights that are ever placed on trial in a court of justice; rights which, in the very nature of things, can neither be exposed to danger nor subjected to the uncontrolled will of any man, but which must be adjudged *according to law*. And the act of the officer who reviews the proceedings of the court, whether he be the commander of the fleet or the President, and without whose approval the sentence can not be executed, is as much a part of this judgment, according to law, as is the trial or the sentence. When the President, then, performs this duty of approving the sentence of a court-martial dismissing an officer, his act has all the solemnity and significance of the judgment of a court of law."

The statute provides that an officer who convenes a court-martial shall have power "on revisal of its proceedings to remit or mitigate, but not to commute the sentence of the court, and the question is, Does that provision of the law make it the duty of the officer to indorse upon the proceedings his action remitting, mitigating, approving, or confirming the sentence.

In this case the commanding officer transmitted the proceedings of the court to the Secretary of the Navy for the consideration of the President, without any suggestions, under the nineteenth article of the act for the better government of the navy, approved July 17, 1862 (*supra*). The latter part of that article reads as follows:

37 "All other sentences may be determined by a majority of votes, and carried into execution on confirmation of the commander of the fleet or officer ordering the court, except such as go to the dismission of a commissioned or warrant officer, which are first to be approved by the President of the United States." The action of the commanding officer was founded upon the construction of the law, that because the sentence involved the dismission of the claimant, it did not require him to take any action in the matter, except to forward the papers to be submitted to the President, in which construction of the law, in the opinion of the court, the officer was correct, and his failure to take any further action did not have the effect to nullify the proceedings of the court-martial.

Upon the question of whether the court was properly constituted, it may be said that it was ordered by the proper officer, to wit, the rear-admiral of the squadron to which the claimant belonged, and was composed of the minimum of officers; but it is insisted by coun-

sel for the claimant that it does not affirmatively appear that a larger number could not be procured.

In reply to this contention it may be said that the Supreme Court has held in substance, that when the commander in chief of a squadron not in the waters of the United States convenes a court-martial to try an officer, the courts of the United States will assume when his action in this respect is attacked collaterally, and nothing contrary appears on the face of the order convening the court, that he properly exercised his discretion, and that the trial of the accused by such a court could not be avoided without inconvenience to the service. (Mullan *v.* The United States, 140 U. S., 240.) That decision was in affirmance of the decision of this court (23 C. Cls. R., 40), in which is quoted approvingly, "Wherever a statute gives a discretionary power to any person, to be exercised by him upon his own opinion of certain facts, it is a sound rule of construction that the statute constitutes him the sole and exclusive judge of the existence of those facts."

On the 30th of May, 1867, the claimant was suspended from duty from 4 to 8 o'clock a. m. by order of Lieut. Commander C. C. Carpenter, and on the same day from 6 to 8 o'clock p. m. was restored to duty by Rear-Admiral H. H. Bell. It is insisted that his suspension and subsequent restoration were in law a discharge from all liability for the same offense for which he was tried and sentenced in the September following. His suspension from duty and restoration to duty on the 30th of May did not have the effect to relieve him from arrest and conviction at a subsequent period. His suspension was not a punishment, but simply had the legal effect of an arrest, and his restoration to duty only discharged him from the consequences of arrest and did not have the effect to discharge him from responsibility of the offense for which he was suspended and for which he was subsequently tried.

The petition is also based on a claim for additional pay from September 13, 1867, to February 8, 1868, in the sum of $257.13, being the difference between sea and shore pay, sea pay and waiting orders, and shore pay and waiting orders.

Upon this branch of the case the findings show that the claimant was detached from the U. S. S. *Wyoming* on September 12, 1867, and directed to report to Lieut. Commander C. C. Carpenter for passage to the United States in the U. S. S. *Wyoming*, under his com-
38 mand, and that upon claimant's arrival he should report to the honorable Secretary of the Navy. This order was made by the rear-admiral commanding the Asiatic squadron. In obedience to that order the claimant sailed for and arrived in the United States and reported to the Secretary of the Navy on February 9, 1868, and then and there received his order of dismissal, as shown in the findings.

The tenth finding shows the amount claimed founded upon the claimant's contention and the amount which has been paid upon the contention of the defendants.

The court decides that the claimant is not entitled to recover for services during which time he was out of the navy by the sentence of the court-martial, and that he is not entitled to recover the difference between what was paid him and what he claims from September, 1867, to February, 1868, and therefore the petition is dismissed.

39 IV.—*Judgment of the Court.*

JOSHUA BISHOP
vs.
THE UNITED STATES. } No. 21914.

At a Court of Claims held in the city of Washington on the 23d day of March, 1903, judgment was ordered to be entered as follows:

The court on due consideration of the premises, finds for the defendants and do order, adjudge and decree, that the petition of the claimant, the said Joshua Bishop, be dismissed.

BY THE COURT.

40 V.—*Application for and Order Allowing Appeal.*

From the judgment rendered in the above-entitled cause in favor of the defendant, the claimant by his attorney on the second day of June, nineteen hundred and three makes application for and gives notice of, an appeal to the Supreme Court of the United States.

IRWIN W. SCHULTZ,
Attorney of Claimant.

Filed June 3, 1903.

Order.

An appeal to the Supreme Court of the United States in above entitled cause is allowed this fourth day of June A. D. nineteen hundred and three.

C. C. NOTT,
Chief Justice.

41 Court of Claims.

JOSHUA BISHOP
vs.
UNITED STATES. } No. 21914.

I, John Randolph, assistant clerk of Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact and conclusion of law, of the

opinion of the court, of the judgment of the court, of the application for and allowance of appeal to the Supreme Court of the United States.

Seal Court of Claims.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court of Claims this 9th day of June A. D., 1903.

JOHN RANDOLPH,
Ass't Clerk Court of Claims.

Endorsed on cover: File No. 19,021. Court of Claims. Term No. 92. Joshua Bishop, appellant, *vs.* The United States. Filed July 24th, 1903.